

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,)	
)	CR 17-00030-DLH
Plaintiff,)	
)	
- vs -)	AFFIDAVIT OF
)	BRENNON NASTACIO
BRENNON NASTACIO, et al)	
)	
Defendants.)	
STATE OF COLORADO)	
COUNTY OF DENVER)	SS:

BRENNON NASTACIO, being duly sworn deposes and says:

I am the one of the Defendants in the above entitled action and tender this Affidavit in support of my Motion to Recuse Judge Hovland. I am a Water Protector and have been recognized as one at the Standing Rock encampments in North Dakota. I am a member of the San Felipe Pueblo in New Mexico.

I currently face criminal charges before this Court, which have lengthy

potential criminal penalties including one charge that carries a mandatory ten-year sentence. I understand I have Constitutional and statutory rights to receive a fair trial by an impartial jury and to have my trial held before a judge that is both impartial and does not have the appearance of bias, prejudice, or improper conduct. I also want to have and believe I have a right to have a judge who will make fair and just pretrial rulings on issues raised by my attorneys and the government.

As a Water Protector and member of an indigenous nation in New Mexico and someone who has been and remains concerned about the rights of Water Protectors and our treatment by law enforcement in North Dakota during protests against Dakota Access Pipeline's constructing a pipeline under Lake Oahe and the Missouri River, I followed and continue to follow media accounts and reports of decisions by the federal judge in Bismarck presiding over the civil lawsuits involving the arrest and treatment of Water Protectors. In addition, my lawyers have provided me with official transcripts and filed court documents containing Judge Hovland's rulings and on the record conversations and statements in these civil cases as well as court documents and Judge Hovland's written Order denying release to Red Fawn Fallis in her federal criminal case.

From reading these materials I have learned that when the Dakota Access Pipeline Company was granted a Temporary Restraining Order against Water

protectors one day after filing their lawsuit, this Court made a number of statements about the actions and intent of Water Protectors. The court labelled us in a negative manner and relied on false and misleading media accounts and drew false conclusions about our nonviolent efforts to protect all those who rely on clean water from the Missouri River and Lake Oahe from contamination of their water source. Similarly, this Court demonstrated a complete lack of concern for protecting Native sacred and ancestral sites from destruction by Dakota Access Pipeline construction.

I know that my current federal criminal case has been assigned to Judge Hovland, the same judge who issued the Temporary Restraining Order against Water Protectors and who also refused to order law enforcement to cease using dangerous and injury causing weapons against us without even a hearing. I thus have been concerned about Judge Hovland's ability to be fair and impartial.

Most recently, I have looked at the written Orders issued by Judge Hovland in the case against us filed by Dakota Access Pipeline. These have greatly increased my concern about his ability to be fair and impartial. I have also seen a copy of a transcript of the statements Judge Hovland made during a conference call in a lawsuit brought by Water Protectors seeking an order from the Judge to stop the extreme violence and unnecessary force that law enforcement personnel have

used against Water Protectors.

According to one of his Orders, from his own watching of local TV and reading the local newspapers, Judge Hovland concluded, "With respect to the assertion the movement has been a peaceful protest, one need only turn on a television set or read any newspaper in North Dakota. There the viewer will find countless videos and photographs of 'peaceful' protestors...verbally taunting, harassing, and showing disrespect to members of the law enforcement community."

I am very disturbed by seeing that Judge Hovland has formed strong opinions based on media accounts and information not presented in Court, describing Water Protectors "ignoring requests to disperse" and how restrained the Bismarck and other police were by not making hundreds of more arrests if they arrested "everybody that was acting in an unlawful, disorderly manner." The Judge also said: "To suggest that all of the protest activities to date have been 'peaceful' and 'lawful' defies common sense and reality."

The Court also stated "many of the troublesome 'peaceful protestors' are from out-of-state who have political interests in the pipeline protest and hidden agendas vastly different and far removed from the legitimate interests of Native Americans of the Standing Rock Sioux Tribe who are actually impacted by the

pipeline project. I am a Native American from out-of-state and thus belong to a group Judge Hovland has determined is “troublesome” and has no legitimate interest in opposing the Dakota Access Pipeline.

I myself have experienced or seen videos or talked to victims and seen wounds and the effects of the great and frightening use of chemical gases against men and women, and sometimes children, as well as attack dogs, rubber bullets, a sound cannon, explosive devises and clubs, feet and fists as police and DAPL security have attacked us.

I am charged with being part of a “violent” civil disorder on October 27, 2016. According to Judge Hovland “almost everybody,” has seen “what went on...in October and the months leading up to that.” From such “evidence”, Judge Hovland has concluded that a “riot” took place on October 27th, although what occurred and was occurring by others in the vicinity where I am accused of participating in a crime is a major element to be decided at my trial. Judge Hovland has already determined that one person that day had a firearm. I am charged with a crime allegedly occurring during a “civil disorder” and Judge Hovland has already concluded that a civil disorder occurred on October 27. It appears to me that Judge Hovland is not just stating that law enforcement has made

the above allegations, but rather has drawn factual conclusions based on incomplete information viewed through the filter of his particular personal opinions about the activities of Water Protectors.

I have also read how Judge Hovland has already decided that those of us who have been arrested were arrested because we were being “unlawful and violent.”

I have also recently learned that U.S. Magistrate Miller issued an Order setting conditions for Red Fawn Fallis’ release. Nevertheless, Judge Hovland then immediately overturned this decision and denied her release. He did so before Red Fawn’s lawyer had any opportunity to respond to the government’s motion to appeal the Magistrate’s order of release.

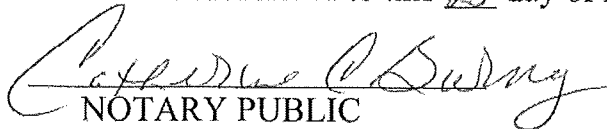
From the transcripts and rulings that I have read, it is clear to me and I believe any unbiased source that Judge Hovland continually accepts and is biased in favor of the government and law enforcement in determining what are the facts. Judge Hovland relies on unknown TV sources and some of his own out of court observations and unverified assumptions to make decisions favorable to the government. All of these indicate Judge Hovland has a personal bias or certainly appears to be biased in favor of the government and against Water Protectors which include me. As a result, I believe I cannot receive a fair trial in front of Judge Hovland. I further believe that given the statements and rulings set forth

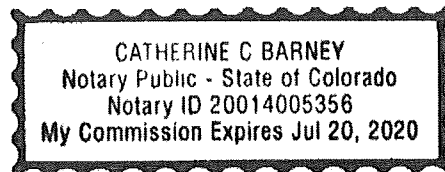
herein, a trial in front of Judge Hovland would have the appearance of bias and one sidedness.

I therefore respectfully ask that Judge Hovland remove himself from making any further decisions in my case and that my case be transferred to another judge through the period of my trial.


Brennon Nastacio

Sworn and subscribed to this 25 day of April, 2017.


NOTARY PUBLIC



My Commission Expires: 7-20-20
(SEAL)